

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4415 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

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PRAVINSINH KALIYA NARPARSINH RAHULJI

Versus

DISTRICT MAGISTRATE

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Appearance:

MR ADIL MEHTA for Petitioner

MR.NEEGAM SHUKLA, AGP for Respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 04/11/96

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 27.4.1996 passed by the District Magistrate, Bharuch whereby the petitioner has been detained under the provisions of the Gujarat Prevention of Antisocial Activities Act, 1985. The detention order was executed on 28.4.1996 and since then the petitioner is under detention lodged at District

Jail, Jamnagar.

The present Special Civil Application was filed in this Court on 27.6.1996 and on 28.6.1996 Rule returnable for 31.7.1996 was issued. So far neither any reply has been filed nor any affidavit of the Detaining Authority has been filed.

The grounds annexed with the detention order show that 3 criminal cases were registered against the petitioner under Bombay Prohibition Act at Rajpipla Police Station. It was the allegation against the petitioner that the petitioner is a bootlegger and he is dealing in the business of unauthorised liquor, beating innocent people as also the police informant. The Detaining Authority has also considered the statements made by 5 witnesses against his antisocial and bootlegging activities. The Detaining Authority has opined that the petitioner is a headstrong person and is a bootlegger. He was engaged in antisocial activities and therefore while invoking the provisions of section 9(2) of the PASA Act for reasons of the security of the witnesses, the detention order has been passed.

The learned counsel for the petitioner has argued that even if the allegations and material relied upon by the Detaining Authority against the petitioner is stated to be correct no case of breach of public order can be said to have been made against the petitioner. It has also been submitted that the copies of the bail applications and bail orders in relation to the criminal cases registered against him on 13.12.1995 at Rajpipla had not been supplied to the petitioner. The learned Additional Government Pleader has not been able to controvert this factual position even on the basis of the record available with him.

In the facts and circumstances of the case, I find that the decision of this Court rendered on 4.10.1996 in Special Civil Application No. 3879 of 1996 applies in full force with the facts of this case. The detention order is based on the ground of breach of law and order and not the case of breach of public order is made out. Besides this, on account of non-supply of the copy of the bail application and bail order in relation to criminal cases registered against the petitioner on 13.12.1995 at Rajpipla Police Station has also remained uncontroverted resulting into violation of the petitioner's right under Article 22(5) of the Constitution of India. The order of detention, therefore, cannot be sustained in the eye of law.

Accordingly, this Special Civil Application is allowed. The impugned detention order dated 27.4.1996 passed by the District Magistrate, Bharcuh is hereby quashed and set aside. The petitioner's detention order is declared to be illegal. The respondents are directed to release the petitioner and set him at liberty forthwith if not required in any other case. Rule is made absolute.

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